

SERVED: March 19, 1993

NTSB Order No. EA-3839

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 16th day of March, 1993

JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12744
v.)	
)	
LARRY EDWARD BROOME,)	
)	
Respondent.)	
)	
)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because it was not, as required by Section 821.48(a) of the Board's Rules of Practice,¹ perfected

¹Section 821.48(a) provides as follows:

"§ 821.48(a) Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief."

by the filing of a timely appeal brief. We will grant the motion.

The record establishes that respondent filed a timely notice of appeal from the written decision the law judge served on January 4, 1993, but he did not file an appeal brief within 30 days after that date; that is, by February 3.² Respondent's explanation for that failure is that he mistakenly believed that he had 30 days from the date he filed a notice of appeal (i.e., January 11) to file an appeal brief.³

Respondent's reason for not filing an appeal brief on time does not serve to excuse the missed deadline. See, e.g., Administrator v. Near, 5 NTSB 994 (1986)(Unfounded mistake as to filing requirement does not constitute good cause).⁴ In the absence of good cause for respondent's noncompliance with the time limit for filing an appeal brief, dismissal of his appeal is required by Board precedent. See Administrator v. Hooper, NTSB Order No. EA-2781 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

²The law judge's order terminated the proceeding on the Administrator's motion for judgment on the pleadings. The Administrator's motion, to which respondent filed no responsive pleading, asserted that respondent had not answered the charges of the complaint, which alleged that respondent's private pilot certificate should be revoked because he had been convicted in a Florida state court of a drug offense involving the use of an aircraft.

³Respondent sent by facsimile transmission a two-page brief to the Board on February 10, 1993. That document does not argue that the law judge erred in any way in granting the motion for judgment on the pleadings. It is, rather, an effort to enumerate factors the respondent believes establish a basis for clemency.

⁴The record reflects that respondent had previously been furnished a copy of the Board's Rules of Practice.